

In considering this ground of equity, it must be remembered, that the complainant in this bill does not intimate any where that he was not as well aware of the facts upon which the allegation of usury is based in 1841, when he consented to the decree, as he is now, and no satisfactory reason is given why he did not make the defence then. He says, to be sure, that the decree then confessed was only designed as a security for some floating balance of accounts, but this ground I have already shown is untenable in point of fact, and, therefore, as I conceive, the complainant is without sufficient excuse for not only failing then to rely upon this defence, but for actually, under oath, admitting that he owed the sum claimed in the bill, and consenting to the decree.

There can of course be no doubt whatever, that prior to the act of 1845, ch. 352, the plea of usury by the mortgagor, or his alienee to a bill of foreclosure by the mortgagee, would have been a full and complete defence. *Trumbo vs. Blizzard & Jacobs*, 6 G. & J., 18. Having omitted to make this defence at the proper time, and having, on the contrary, admitted the claim and consented to the decree, the question is, shall he, seven years afterwards, be allowed to open the decree upon this ground, and institute an examination into a matter which, by the decree, was supposed to be finally settled. There can be no doubt that a judgment at law, under such circumstances, would not be disturbed. If a defendant having the means of defence in his power in an action against him at law, omits to use them, and suffers a recovery to be had against him, he is precluded from asking relief in chancery in relation to the same matter. *Gott & Wilson vs. Carr*, 6 G. & J., 309. This is the undoubted rule in regard to judgments at law, and I can conceive of no reason why the decree of this court should be dealt with in a different way. Why should parties be permitted to come into this court, and not only omit in due time to present their defence, but admit they have no defence to claims made against them, and then years afterwards be allowed to say that these omissions and confessions amount to nothing, and that at the very time they were made there were grounds of defence upon